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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91249209
Party	Defendant RAYHAWK CORPORATION
Correspondence Address	FARAH P. BHATTI BUCHALTER, A PROFESSIONAL CORPORATION 18400 VON KARMAN AVE., SUITE 800 IRVINE, CA 92612 trademark@buchalter.com, fbhatti@buchalter.com no phone number provided
Submission	Answer
Filer's Name	Farah Bhatti
Filer's email	trademark@buchalter.com, fbhatti@buchalter.com
Signature	/fbhatti/
Date	08/01/2019
Attachments	Answer to Notice of Opposition for DR. NEO.pdf(22669 bytes)

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Neogenomics Laboratories, Inc.

Opposer,

Opposition No. 91249209

v.

Serial No. 88/256754 Filed: January 10, 2019

Rayhawk Corporation

Published: May 7, 2019

**Applicant** 

Mark: DR. NEO

#### APPLICANT'S ANSWER TO THE NOTICE OF OPPOSITION

Applicant, Rayhawk Corporation ("Applicant"), by its undersigned counsel of record, hereby answers the Notice of Opposition ("Opposition") as follows:

- 1. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 1 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.
- 2. Applicant admits that Opposer is the record owner in the U.S. Patent and Trademark Office database of the Registrations listed in Paragraph 2. Except as expressly admitted herein, Applicant lacks information or knowledge sufficient to admit or deny the remaining allegations contained in Paragraph 2 of the Opposition and based upon said lack of information or knowledge denies the remaining allegations contained therein.

- 3. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 3 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.
- 4. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 4 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.
- 5. Applicant lacks information or knowledge sufficient to admit or deny the allegations of Paragraph 5 of the Opposition and based upon said lack of information or knowledge denies each and every allegation contained therein.
- 6. Applicant admits that it filed an application for DR. NEO for services in Class 44 and that said application was published for Opposition on May 7, 2019. Applicant denies all remaining allegations contained in Paragraph 6.
  - 7. Applicant denies the allegations in Paragraph 7 of the Notice of Opposition.
  - 8. Applicant denies the allegations in Paragraph 8 of the Notice of Opposition.
  - 9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.

#### AFFIRMATIVE DEFENSES

10. Opposer has failed to state a claim upon which relief can be granted.

- 11. There is no likelihood of confusion, mistake or deception between Applicant's mark and the pleaded marks of Opposer because the respective parties' marks are not confusingly similar, including but not limited to the following reasons:
- (a) The marks themselves are not confusingly similar as they are different in sound/pronunciation, appearance, connotation and commercial impression;
- (b) The respective services are markedly different, the services of the respective parties are noncompetitive and unrelated;
  - (c) There is no material evidence of actual confusion.
- 12. Opposer does not have exclusive rights to utilize the term NEO and should not be permitted to monopolize marks that are not confusingly similar to Opposer's mark, especially where Opposer's services are different and distinguishable from the services of others.
- 13. Opposer's rights in the mark are limited based on the substantial number of third party uses of marks which are similar to those of Opposer and some of which are used in connection with services which are more closely related to the services of Opposer than are those of Applicant.
- 14. Opposer suffered no damages nor will it suffer damages in the future by Registration of Applicant's mark.
- 15. The claims alleged by Opposer in the Notice of Opposition are frivolous, alleged with the knowledge that there is no likelihood of confusion between the marks of the respective parties and alleged in bad faith.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be dismissed in its entirety, with prejudice, and Applicant's mark be allowed to proceed towards registration.

Dated: August 1, 2019 Respectfully Submitted,

## **Rayhawk Corporation**

By: \_\_\_\_/fbhatti/\_\_\_\_\_

Farah P. Bhatti Buchalter, a Professional Corporation 18400 Von Karman Ave., Suite 800 Irvine, California 92612

Phone: 949.224.6272 Fax: 949.720.0182

trademark@buchalter.com fbhatti@buchalter.com

Attorneys for Applicant

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the Answer to the Notice of Opposition was served on Opposer by sending a copy via email to Opposer's counsel of record on August 1, 2019, as follows:

ttabmail@whitelawfirm.com

/fbhatti/	
Farah P. Bhatti	